

1 FRANCIS J. CUNNINGHAM III, Bar No. 60900
2 DAVID S. BARTELSTONE, Bar No. 222891
3 CUNNINGHAM & TREADWELL
4 Warner Center Towers, Suite 840
5 21800 Oxnard Street
6 Woodland Hills, California 91367-3640
7 PH: (818) 348-1112
8 FAX: (818) 340-6772
9 email: mail@ctlaw.cc

10 Attorneys for Defendant,
11 WMC MORTGAGE LLC as successor-in-interest to WMC MORTGAGE CORP.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 DONNIE KNAULS,

12 Plaintiff,

13 vs.

14 WMC MORTGAGE; ASC/AMERICA'S
15 SERVICING COMPANY; MORTGAGE
16 LENDERS NETWORK USA INC;
17 COUNTRYWIDE HOME LOANS

18 Defendants.

) CV NO. 07CV2233-DMS (NLS)

)
) NOTICE OF MOTION AND MOTION
) OF WMC MORTGAGE LLC TO
) STRIKE PORTIONS OF PLAINTIFF'S
) AMENDED COMPLAINT

) [F.R.C.P. Rule 12(f)]

) [Oral Argument Not Required]

) Hearing:

Date: May 23, 2008

Time: 1:30 p.m.

Courtroom: 10

Honorable Dana M. Sabraw

21 TO THE HONORABLE DANA M. SABRAW, UNITED STATES DISTRICT JUDGE; TO
22 PLAINTIFF, AND TO ALL INTERESTED PARTIES:

23 PLEASE TAKE NOTICE that on May 23, 2008, at 1:30 p.m., or as soon thereafter as the
24 matter may be heard, in Courtroom 10 of the above-entitled Court located at 880 Front Street,
25 San Diego, California 92101, WMC Mortgage LLC as successor-in-interest to WMC Mortgage
26 Corp. ("WMC") for itself alone and for no other defendants, will move the Court for an Order
27 Striking Portions of Plaintiff's Amended Complaint, pursuant to F.R.C.P. § 12(f), because

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certain portions of the "allegations" of the Amended Complaint are irrelevant, redundant, immaterial, impertinent, scandalous, and improper requests for relief.

The Motion are based upon this Notice, the attached Memorandum of Points and Authorities, the court file herein, and on such other oral and documentary evidence as may be presented at the time of the hearing.

WHEREFORE, WMC respectfully requests that the Court strike the following portions of plaintiff's complaint:

- (1) Amended Complaint, p. 3, l. 16-17, including all allegations referring to the "Bankruptcy Reform Act;"
- (2) Amended Complaint, p. 3, ll. 25-26), including all allegations referring to the "Supplemental Rules of Admiralty... the Law of Nations, [and the] Law and Justice;"
- (3) Amended Complaint, p. 7, l. 14, including all allegations referring to GAAP;
- (4) Amended Complaint, p. 7, l. 14, including all allegations referring to the uncertain HJR-192;;
- (5) Amended Complaint, p. 7, l. 14, p. 12, l. 9 through p. 13, l. 5, inclusive, including all allegations referring to the Uniform Commercial Code;
- (6) Amended Complaint, p. 7, l. 19, including all allegations referring to the "international maritime contract;"
- (7) Amended Complaint, Exhibit "4" attached thereto, including all references to the "Affidavit of Todd Walker - Expert Witness."

WMC requests the aforementioned portions of plaintiff's Amended Complaint by stricken in their entirety, and grant such other and further relief as the Court deems just and proper.

Dated: April 1, 2008

Respectfully submitted,

CUNNINGHAM & TREADWELL

By:

DAVID S. BARTELSTONE

Attorneys for Defendant,

WMC MORTGAGE LLC as successor-in-interest to WMC MORTGAGE CORP.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant, WMC Mortgage LLC as successor-in-interest to WMC Mortgage Corp. ("WMC"), is believed to have been sued in this action relating to its loan of \$344,000.00 to plaintiff, Donnie Knauls, on December 29, 2006, and relating to the real property located at 2360 Cypress Avenue, Lemon Grove, CA , 91945. It is believed that WMC is being sued for violations of "Regulation Z Truth and Lending Action, Title 5 [sic] U.S.C. § 1635(a), Title 12 C.F.R. 226.23(D)(I)), although due to the completely unintelligible nature of the Complaint, WMC cannot apprise itself of what violations it is alleged to have committed and to what it must defend itself against.

The "allegations" of plaintiff's Amended Complaint relating to the "Bankruptcy Reform Act;" (see, Amended Complaint, p. 3, l. 16-17); the "Supplemental Rules of Admiralty... the Law of Nations, [and the] Law and Justice," (see, Amended Complaint, p. 3, ll. 25-26); (3) GAAP, (see, Amended Complaint, p. 7, l. 14); HJR-192, (see, Amended Complaint, p. 7, l. 14); the Uniform Commercial Code, (see, Amended Complaint, p. 7, l. 14, p. 12, l. 9 through p. 13, l. 5, inclusive); an "international maritime contract," (Amended Complaint, p. 7, l. 19); and the "Affidavit of Todd Walker - Expert Witness," (See, Amended Complaint, Exhibit "4" attached thereto), must be stricken as irrelevant, redundant, immaterial, impertinent, scandalous.

II. ARGUMENT

A. RULE 12(f).

Before responding to a pleading, a party may move to strike any "insufficient defense or any redundant, immaterial, impertinent or scandalous matter. (F.R.C.P. 12(f).) A motion to strike may be granted where "it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation." (LeDuc v. Kentucky Central Life Ins. Co (ND CA 1992) 814 F.Supp. 820, 830.)

"Redundant" has been defined as including allegations that are wholly foreign to the issues involved or the needless repetition of allegations. (Gilbert v. Eli Lilly Co., Inc. (D. PR. 1972) 56 FRD 116, 120, fn. 4.) "Immaterial" means the matter has no bearing on the controversy before the

1 court. (Fantasy, Inc. v. Fogerty (9th Cir. 1993) 984 F.2d 1524, 1527; Johnson v. American Aviation
 2 Corp. (D. N.D. 1974) 64 F.R.D. 435, 438-439.) "Impertinent" has been defined to include
 3 allegations that are not responsive or relevant to issues involved in the action and which could not be
 4 admitted as evidence in the action. (Id.) "Scandalous" has been defined as allegations that cast a
 5 "cruelly" derogatory light on a party or other person. (Skadegaard v. Farrell (D NJ 1984) 578
 6 F.Supp. 1209, 1221; Talbot v. Robert Matthews Distributing Co. (7th Cir. 1992) 961 F.2d 654, 665.)

7 Clearly, the aforementioned portions of plaintiff's Amended Complaint have **absolutely**
 8 **nothing** to do with any alleged violations of Regulation Z or the Truth in Lending statutes. The
 9 aforementioned "allegations" of plaintiff's Amended Complaint must be stricken as irrelevant,
 10 redundant, immaterial, impertinent, scandalous. There are zero charging allegations as against WMC
 11 and relating to these "allegations."

12 III. CONCLUSION

13 The cited portions of plaintiff's Amended Complaint are clearly improper, and lack any
 14 sufficiency or propriety in the Amended Complaint. WMC requests this Court to strike the
 15 following portions of plaintiff's Amended Complaint:

- 16 (1) Amended Complaint, p. 3, l. 16-17, including all allegations referring to the
 17 "Bankruptcy Reform Act;"
- 18 (2) Amended Complaint, p. 3, ll. 25-26), including all allegations referring to the
 19 "Supplemental Rules of Admiralty... the Law of Nations, [and the] Law and Justice;"
- 20 (3) Amended Complaint, p. 7, l. 14, including all allegations referring to GAAP;
- 21 (4) Amended Complaint, p. 7, l. 14, including all allegations referring to the uncertain
 22 HJR-192;;
- 23 (5) Amended Complaint, p. 7, l. 14, p. 12, l. 9 through p. 13, l. 5, inclusive, including all
 24 allegations referring to the Uniform Commercial Code;
- 25 (6) Amended Complaint, p. 7, l. 19, including all allegations referring to the
 26 "international maritime contract;"

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(7) Amended Complaint, Exhibit "4" attached thereto, including all references to the
"Affidavit of Todd Walker - Expert Witness."

Dated: April 1, 2008

Respectfully submitted,

CUNNINGHAM & TREADWELL

By: 

DAVID S. BARTELSTONE
Attorneys for Defendant,
WMC MORTGAGE LLC as successor-in-
interest to WMC MORTGAGE CORP.